IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 917 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STANDARD CHARTERED BANK - Applicant(s)
Versus
DHANANJAY JAGDISHCHANDRA GOR & 1 - Respondent(s)

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Appearance :
MR CHINTAN R. ABICHANDANI for Applicant(s) : 1,MR CR ABICHANDANI for Applicant(s) : 1,
MR SHAKEEL A QURESHI for Respondent(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/10/2006

ORAL JUDGMENT

Standard Chartered Bank, through its authorised person-Shri Sanjay Patil is before this Court. The

petitioner-Bank is aggrieved by an order passed by the learned Presiding Officer, 8th Fast Track Court, Surat in Criminal Revision Application No.74 of 2005 dated 28th October 2005.

In Criminal Revision Application No.74 of 2005, the learned Judge was pleased to quash and set aside the order passed in Muddamal Application No.101 of 2005 by the learned In-charge Judicial Magistrate (First Class), 3rd Court. The learned Judge was pleased to order that on a personal bond of Rs.1.50 lakhs and surety of the like amount the Muddamal-Maruti Zen bearing registration No.GJ-5-AG-7407 (Chasis No.447687, Engine No.436725), which is given new number GJ 17-C-5337 be given to the opponent-Dhananjay Jagdishchandra Gor as interim custody.

The learned Judge was pleased to provide for conditions, namely, 'without prior permission of the Court the vehicle should not be sold, mortgaged, gifted, assigned or in any manner transferred', 'that the Muddamal vehicle shall be produced before the Court as and when directed at one's own cost without any delay'.

2. The case of the petitioner-Standard Chartered Bank is that it gave loan of Rs.2.51 lakhs to one, Rajiv H.

Chimnani for purchase of the aforesaid vehicle repayable in monthly instalments. As the said loan amount was not paid, the Bank filed an F.I.R. Registered as C.R. No.I-208 of 2002 at Athwa Line Police Station, Surat. During the course of the investigation, possession of the vehicle was taken from the present respondent-Dhananjay Jagdishchandra Gor. Thereafter, without calling the complainant-the financier/ petitioner- Bank, the learned JM(FC) ordered to give custody of the vehicle to respondent no.1.

This order was challenged before this Court in Criminal Revision Application No.218 of 2004 (sic., 280 of 2004). This Court remanded the matter for fresh hearing by order dated 22.02.2005, after making observations that the applicant Bank had released huge amount towards the said loan and the same was not disputed, it was also mentioned that the most affected party was the Bank.

At the time of hearing the matter afresh, the petitioner as well as respondent no.1 were heard. The learned JM (FC), Surat passed an order giving interim custody to the Bank. This order was challenged by respondent no.1 before the learned Sessions Judge, Fast Track Court, Surat, who passed the order under challenge in this

petition.

3. Learned advocate Mr.Chintan R. Abichandani appearing for the petitioner Bank invited attention of the Court to the material document, i.e. letter dated 10th October 2002 from Kiran Motors Limited to Standard Chartered Bank. The letter contains information regarding three vehicles. Vehicle at serial no.1 is the subject matter of the present proceedings. He also invited attention of the Court to the Invoice of Kiran Motors, in the name of Rajiv H. Chimnani, Invoice No.4001-91762 YR 4 dated 27.11.1999.

4. Mr.Qureshi, learned advocate appearing for respondent no.1 produced certified copies of Muddamal Application No.101 of 2005, Certificate of Registration of Motor Vehicle of Registration No.GJ-5-AG 7407, wherein the name of the registered owner is Mr.Rajivbhai Hariram Chimnani. The learned advocate Mr.Qureshi also produced a copy of list by which documents were produced in Muddamal Application No.101 of 2005. At running page no.167, two documents were produced by this list. He produced a copy of the printed form for re-sale of motor vehicle bearing Registration No.GJ-5-AG-7407, it is dated 12.12.2001. It is in witness of Nehru Motors and Pankaj

Surana. The document shows that an amount of Rs.2,30,000/- is received from respondent no.1 (Dhanraj Jagdishchandra Gor). Learned advocate Mr.Qureshi says that on a revenue stamp affixed on the document, Shri Mohan Dayal Parta has signed (the signature is illegible). The learned advocate also produced a xerox copy of registration particulars of motor vehicle bearing Registration No.GJ-5-AG-7407 issued by the Regional Transport Office, Surat.

Learned advocate Mr.Qureshi has also produced a certified copy of the list produced in Maddamal application No. (blank) bearing running page No.27, it is dated 09.03.2003. By this list two documents were produced. One is a xerox copy of duplicate R.C. Book of the vehicle bearing Registration No.GJ-17-C-5337. It is re-numbered as GJ-5-TT-9690. This set of documents also contain xerox copy of the document referred to earlier, i.e. 'form of re-sale'. In this xerox copy, date column is blank. Learned advocate Mr.Qureshi is not able to explain as to how the date column is '**blank**' in this copy. Running page no.169, and running page no.43 are the xerox copies of the same document.

Learned advocate, Mr.Qureshi also produced a copy of the

report submitted by the Regional Transport Office, Surat, it is dated 19th October 2005, filed in Criminal Revision Application No.74 of 2005 at Exhibit 12. It is addressed to the Presiding Officer, 8th Fast Track Court, Surat.

5. Learned advocate Mr.Qureshi submitted that from this report submitted by the Regional Transport Office it is clear that the R.C. Book of the vehicle did not bear at any point of time a note/ entry to show that the petitioner Bank, i.e. Standard Chartered Bank financed the vehicle. It is important to note here that the vehicle was first registered in the name of Rajiv H.Chimnani on 21.12.1999. On 31.12.1999 a joint declaration was given by said Shri Rajiv H. Chimnani and Gangadhar Lease Finance Limited for making entry in the R.C. Book under section 5(12) of the Motor Vehicles Act, 1988, on that basis an entry was made on 3rd January 2000.

Again on 21.01.2000 a joint declaration was made before the RTO authorities declaring that the loan financed by Gangadhar Lease Finance Limited is repaid and therefore, under subsection (3) of section 51 of the Motor Vehicles Act, 1988 necessary entry was made. On 10.02.2000 the vehicle was sold by the original owner (Rajiv H. Chimnani) to one Mohan Dayal Parta and the vehicle was got transferred under subsection (6) of section 50 of

1988 Act. It is this second owner, Shri Mohan Dayal Parta who sold this vehicle to present respondent no.1-Dhananjay Jagdishchandra Gor. An application was filed on 12/13th December 2001 for necessary change in the name. Respondent no.1 then gave an application for converting the vehicle into taxi cab on 21.12.2001. Permission was granted and the vehicle was given a new number being GJ-5-TT-9690. Respondent no.1 herein, the third owner of the vehicle then filed an application for change of address as he wanted to take the vehicle to Godhra and for which he required 'No Objection Certificate'. Again at Godhra, vehicle was converted from taxi to a private use vehicle and the vehicle was given new registration no. of private use being GJ-17-C-5337. Again respondent no.1 got the vehicle transferred from Godhra to Surat after obtaining NOC from Godhra. The RTO, Surat has given a report that from the record of RTO it is not borne out that the petitioner-Standard Chartered Bank has financed the said vehicle. The RTO has submitted this report to the court and has requested to proceed further in the matter after taking into consideration this report.

6. Mr.Chintan R. Abichandani, learned advocate for the petitioner-Bank submitted that, 'brother of respondent no.1 is an RTO Agent and is at Surat'. He submitted that

from 21.12.1999 to 24.12.2001, in a short span of two years, there were three changes of ownership. Twice there was change of RTO from Surat to Godhra and vice versa. Besides, vehicle was changed from private vehicle to taxi and then from taxi to private vehicle. He submitted that this was done under a well planned 'scheme' so as to see that it becomes difficult for the petitioner-Bank to identify the vehicle with the changed registration number with change of RTO and change of use.

Mr.Abichandani relied upon a decision of the Division Bench of this Court in the matter of **State of Gujarat Vs. Nareshbhai and others**, reported in 1988 (3) Crimes 546. The learned advocate for the petitioner submitted that para 4 is relevant. It reads as under:

> "It is the established principle of law that **no one can give what he has not got**, i.e. a person having no title or authority over the article cannot give better title to the purchaser. If one deals with the goods of another without his authority, the transaction is as against that other person nugatory in law. This principle of law is embodied in section 27 of the sale of Goods Act, 1930 but is subject to certain

exceptions, such as dealing with the currency notes or negotiable instruments and certain other exceptions provided under the Sale of Goods Act." (emphasis supplied)

The learned advocate submitted that the Division Bench has observed in para 5 that:

"Therefore, general principle is that where goods are sold by a person who is not the owner, and who does not sell under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had. This principle is subject to certain exceptions as discussed above. But merely because a person is a bona fide purchaser for value without notice that the goods are **stolen goods**, would not be a ground for holding that he acquires good title over the property. Even with regard to negotiable instruments, the articles must be acquired in good faith for value, then and then the person acquires title over it. Therefore, once it is proved that the respondent no.3 has purchased stolen golden article even for value, he would not get good

title over it.” (emphasis supplied)

Learned advocate for the petitioner submitted that so far as return of Muddamal article is concerned, in the same judgement, in para 6 the Hon'ble Court has said that,

> “Further, before passing the order the learned Judge has not held any enquiry as contemplated under sec.452 of the Criminal Procedure Code. Therefore, also the order passed by the learned Judge is on the face of it illegal.”

7. Mr.Qureshi, learned advocate for respondent no.1 submitted that the interest of the Bank is sufficiently protected by the learned Judge by providing condition of not transferring the vehicle in any manner without prior permission of the Court. He submitted that therefore, this Revision Application must fail and the order of the learned Judge may be upheld. Lastly, he submitted that if the court feels that for protecting the interest of the Bank some other condition/s are required to be imposed, the same may be done without disturbing the possession of Muddamal vehicle which is at present with respondent no.1.

8. The fact that the vehicle was financed by the petitioner-Bank and the fact that under a well designed and well planned scheme the Bank is denuded of its amount financed on the vehicle and the history which is reflected from the report of the RTO, Surat, it is deemed fit that the order passed by the learned Presiding Officer, 8th Fast Track Court, Surat be quashed and set aside and the custody of the vehicle be given to the petitioner-Bank. Order accordingly.

9. Mr.Qureshi, learned advocate submitted that the order is in the nature of interlocutory order and therefore, no interference is called for at the hands of this Court. There is no substance in this submission, hence rejected.

10. At this juncture, Mr.Abichandani requested that the Bank may be permitted to sell the vehicle on such terms and conditions which the Court may deem fit. The request is granted. The Bank is permitted to sell the vehicle after acquiring possession thereof. The Bank shall intimate the sale and sale price to the Court. The same shall be paid, if so ordered with interest which shall be at the rate of Bank rate. Respondent no.1 is directed to hand over possession of the vehicle to the Bank on or

before 1st November 2006. The Revision Application is allowed. Rule is made absolute.

11. The observations made are prima facie and the learned Trial Judge shall not be influenced by any of the observations made in this behalf.

(RAVI R. TRIPATHI, J.)

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